

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CITY MERCHANDISE INC.,

Plaintiff,

-against-

TIAN TIAN TRADING INC. and WEIWEI LIN,

Defendants,

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 4/19/2022

1:19-cv-09649-MKV

ORDER

MARY KAY VYSKOCIL, United States District Judge:

This litigation has been marked by a history of discovery issues and unresponsiveness by Defendants. A little over a year into this case, counsel for Defendants was given leave to withdraw and the Court ordered the corporate Defendant to retain counsel, [ECF Nos. 36, 37], since a corporation may not appear *pro se*. Defendant has failed to do so or to participate in discovery or otherwise engage in this action.

On April 16, 2021, Plaintiff moved this Court for an Order striking Defendants' answers and directing the Clerk of Court to enter a default against Defendants. [ECF No. 47]. The Court denied without prejudice Plaintiff's Motion and directed Defendants to show cause before this Court on April 19, 2022 at 2:00 PM, why an order should not be issued pursuant to Rule 37 of the Federal Rules of Civil Procedure, striking the Answers filed by Defendants Tian Tian Trading Inc. and Weiwei Lin and directing the clerk to enter default for Defendants for Defendants' failure to comply with the Court's prior orders. [ECF No. 52]. The Court directed Plaintiff to serve a copy of the Court's Orders at ECF Nos. 36, 37, and 52 on *pro se* Defendants by personal service. [ECF No. 52].

On April 19, 2022 at 2:00 PM, the Court convened for the Show Cause hearing. Plaintiff's counsel was in attendance, but neither Defendant appeared. The Court inquired of

Plaintiff as to whether service of the Court's orders had been affected by Plaintiff in compliance with the Court's Order to Show Cause. Plaintiff complied with the Court's order with regard to the corporate Defendant Tian Tian Trading Inc. [see ECF No. 53], but stated that he was unable to affect personal service on the individual Defendant, Weiwei Lin. Plaintiff advised the Court that he did not file a letter requesting leave to serve Defendant Weiwei Lin by alternative service, *i.e.*, email, because he assumed that Defendant Weiwei Lin, who entered an appearance on the Docket, received ECF notifications of Court orders. Plaintiff further advised the Court that he had previously communicated with Defendant Weiwei Lin through the email address listed on the Docket.

Accordingly, in order to ensure that Defendant is aware of the Court's Order to Show Cause and provide Defendant one last opportunity to respond to Plaintiff's request for sanctions, the Court directs Defendant Weiwei Lin to respond, by April 22, 2022, why an order should not be issued pursuant to Rule 37 of the Federal Rules of Civil Procedure, striking the Answers filed by Defendants Tian Tian Trading Inc. and Weiwei Lin and directing the clerk to enter default for Defendants for Defendants' failure to comply with his discovery obligations and with the Court's prior orders.

Plaintiff is directed to serve this order, and the Court's Orders at ECF Nos. 36, 37, and 52 on Defendant Weiwei Lin via email today.

THIS IS DEFENDANT'S LAST OPPORTUNITY TO RESPOND AND HIS FINAL WARNING. FAILURE TO RESPOND TO THIS COURT'S ORDER BY APRIL 22, 2022 MAY RESULT IN SANCTIONS, INCLUDING THE STRIKING OF DEFENDANTS' ANSWERS AND AN ENTRY OF A DEFAULT JUDGMENT AGAINST DEFENDANTS.

SO ORDERED.

Date: April 19, 2022
New York, NY

Mary Kay Vyskocil
MARY KAY VYSKOCIL
United States District Judge